

1-2-2018

## State v. Rogstad Appellant's Brief Dckt. 45292

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45292
	)	
v.	)	KOOTENAI COUNTY
	)	NO. CR 2015-13846
JESSE RYAN ROGSTAD,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following a court trial, the district court found Jesse Ryan Rogstad guilty of felony injury to jail, with a persistent violator sentencing enhancement. The district court imposed a unified sentence of ten years, with three years fixed, suspended the sentence, and placed Mr. Rogstad on probation for a period of three years. Mr. Rogstad later admitted to violating his probation. At the probation violation disposition hearing, he requested, in an oral Idaho Criminal Rule 35 (“Rule 35”) motion, that the district court modify his sentence to a unified sentence of three years, with one year fixed. The district court instead revoked Mr. Rogstad’s probation and executed his underlying sentence without modification. On appeal, Mr. Rogstad asserts the district court abused its discretion when it denied his Rule 35 motion.

### Statement of the Facts & Course of Proceedings

Mr. Rogstad broke off a fire sprinkler in his cell at the Kootenai County Public Safety Building, causing his cell and the surrounding area to flood. (Presentence Report (*hereinafter*, PSI), pp.2, 21.) The State charged Mr. Rogstad with injury to jail, felony, I.C. § 18-7018, with a persistent violator sentencing enhancement under I.C. § 19-2514. (R., pp.53-54, 70-71, 100-01.) Mr. Rogstad entered a not guilty plea. (R., p.79.) He subsequently requested a court trial. (*See* R., p.94.) Following the court trial, the district court found that Mr. Rogstad was guilty of injury to jail, and that he was a persistent violator. (R., pp.95-99, 104.)

The district court imposed a unified sentence of ten years, with three years fixed, suspended the sentence, and placed Mr. Rogstad on supervised probation for a period of five years. (R., pp.109-13; *see* R., pp.192-96 (Amended Judgment and Sentence).) As a special term of probation, the district court required Mr. Rogstad to apply to mental health drug court and comply with all program requirements if accepted. (*See* R., pp.107, 114-18.) Mr. Rogstad's counsel later informed the district court Mr. Rogstad had been accepted into mental health drug court. (R., p.124.)

About nine months after Mr. Rogstad's acceptance into mental health drug court, the State filed a Report of Probation Violation, alleging Mr. Rogstad had violated his probation by being terminated from the mental health court program for noncompliance with its rules. (R., pp.168-69.) Specifically, the State alleged Mr. Rogstad had been terminated after refusing to take his mental health medication, absconding, and giving a urinalysis sample that tested positive for use of amphetamine, methamphetamine, and marijuana. (*See* R., pp.168-71.) Mr. Rogstad admitted to the alleged violations. (Tr. May 22, 2017, p.4, L.19 – p.5, L.11; Tr. July 13, 2017, p.12, Ls.14-19; *see* R., p.188.)

During the probation violation disposition hearing, the State recommended the district court revoke probation and execute Mr. Rogstad's underlying sentence. (Tr. July 13, 2017, p.13, L.1 – p.14, L.9; *see* R., p.202.) Mr. Rogstad asked the district court to modify his sentence to a unified term of three years, with one year fixed, and with the fixed term to be served in county jail. (Tr. July 13, 2017, p.14, L.10 – p.16, L.7; *see* R., p.202.) The district court revoked Mr. Rogstad's probation and executed his underlying sentence without modification. (R., pp.204-06.)

Mr. Rogstad filed a Notice of Appeal timely from the district court's Judgment and Sentence – Probation Violation.<sup>1</sup> (R., pp.213-16; *see* R., pp.227-30 (Amended Notice of Appeal).)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Rogstad's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Rogstad's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Rogstad asserts the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence. The district court should have instead followed the recommendation of Mr. Rogstad, by modifying his sentence to a unified term of three years, with one year fixed, and having him serve the fixed term in county jail.

By asking the district court to modify his sentence, Mr. Rogstad filed an oral Rule 35 motion for a reduction of sentence. (*See* Tr. July 13, 2017, p.14, L.10 – p.16, L.7.) Rule 35

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<sup>1</sup> Mr. Rogstad also filed a written Motion for Reconsideration of Sentence, Pursuant to I.C.R. 35. (R., pp.207-08.) As of the current date, the district court has not yet ruled on that motion.

provides that a district court may “reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation.” I.C.R. 35(b).

“A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

Mr. Rogstad asserts his underlying sentence is excessive in view of the new and additional information presented with his Rule 35 motion. Specifically, Mr. Rogstad’s refusal to take his mental health medications may be explained by his reported reaction to those medications. As discussed above, Mr. Rogstad was terminated from mental health court after he had refused to take his medications, absconded, and gave a urinalysis sample that tested positive for illegal drugs. (*See R.*, pp.168-71.) However, at the probation violation disposition hearing, Mr. Rogstad told the district court, “the drugs that they want me to take have—have a terrible effect on my liver, my kidneys, my heart, my brain.” (Tr. July 13, 2017, p.20, L.25 – p.21, L.2.) He stated, “[w]hen I’m on those drugs that they want me to take, I can’t even keep food down. And that’s one of the reasons why I flopped being out last time because I couldn’t even keep any food down.” (Tr. July 13, 2017, p.21, Ls.5-8.)

Further, Mr. Rogstad suffers from serious mental health issues. Mr. Rogstad's GAIN-I Recommendation and Referral Summary (GRRS) stated that Mr. Rogstad "reported being diagnosed with Schizoaffective Disorder, PTSD, ADHD, and Bipolar Disorder." (PSI, p.35.) At the probation violation disposition hearing, Mr. Rogstad's counsel asserted that Mr. Rogstad "obviously presents uniquely to this Court because of his mental health difficulties. And certainly I don't have a magic ball to see how that's going to play out but he is only 36 years old and Jesse's been dealing with these issues since he's been 19." (Tr. July 13, 2017, p.15, Ls.3-7.) Counsel told the district court that Mr. Rogstad had "been hospitalized 20 times at the State Hospital." (Tr. July 13, 2017, p.15, Ls.7-8.)

Additionally, Mr. Rogstad indicated that if the district court modified his sentence as requested and allowed him to serve the modified one-year fixed term in jail, he would be able to become an inmate worker. Mr. Rogstad's counsel stated during the probation violation disposition hearing that if the district court modified the sentence and allowed Mr. Rogstad to serve the fixed term in jail, "he believes he'll be able to be an inmate worker. Because he'll have an imposed sentence at that time so he'll be able to transition to that. He spoke to some of the deputies about that." (Tr. July 13, 2017, p.15, L.24 – p.16, L.6.) Counsel asserted, "[t]hat will give Jesse sort of the ability to work and to have a purpose." (Tr. July 13, 2017, p.16, Ls.6-7.)

Mr. Rogstad told the district court, "I can be a do-gooder and I can contribute to being a benefactor of the county jail and bettering it you know and cleaning it up a lot." (Tr. July 13, 2017, p.17, Ls.8-10.) Later, Mr. Rogstad stated, "I've never had the opportunity to be an inmate worker. And Sergeant Hutchinson said if you can get sentenced to county time, I will make you an inmate work[er] and you can contribute to bettering this place." (Tr. July 13, 2017, p.22, Ls.19-22.) He asked the district court to "please have compassion on me and please leave me in

county and please let me—let me contribute to bettering things for the first time in a long time . . . .” (Tr. July 13, 2017, p.23, Ls.3-5.)

Mr. Rogstad submits that his underlying sentence is excessive in view of the above new and additional information presented with his Rule 35 motion. Thus, Mr. Rogstad asserts the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence.

### CONCLUSION

For the above reasons, Mr. Rogstad respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 2<sup>nd</sup> day of January, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of January, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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SCOTT WAYMAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

LISA M CHESEBRO  
CONFLICT PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BPM/eas